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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,114	11/09/2001	Edward Pabst	36657-00400	2362
7590 11/30/2004 Milbank, Tweed, Hadley & McCloy LLP One Chase Manhattan Plaza New York, NY 10005-1413			EXAMINER SMITH, JEFFREY A	
			ART UNIT 3625	PAPER NUMBER

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/045,114	<b>Applicant(s)</b> PABST ET AL. <span style="float: right;">ms</span>	
	<b>Examiner</b> Jeffrey A. Smith	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-37 and 41-60 is/are rejected.
- 7) ☒ Claim(s) 10-12 and 38-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 23, 2004 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 1, 2, 5-9, 29, 30, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gadson (US 2002/0103566) in view of Bertram et al. (U.S. Patent No. 6,191,785 B1).

Gadson discloses allowing a user to reorder an article fitted to a human being (par. 0008).

The user accesses a reordering interface through a user interface (par. 0025); and is allowed to customize the article, via the user interface, during a session with a customizing interface (par. 0031). The user is allowed to reorder the article via the user interface (par. 0014).

Gadson does not disclose that the user customizes the article through the use of a visual aid. Gadson is silent to the specific manner in which data is input by a user.

Bertram et al., however, teaches that sliders are used in graphical user interfaces to adjust the value of an object by dragging the slider back and forth (col. 1, lines 51-52; and col. 2, lines 3-13).

It would have been obvious to one of ordinary skill in the art to have provided the method of Gadson to have allowed for customization of the article through the use of a visual aid (such as a slider) in order that the customization values input by the user could have been adjusted along a range of possible

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values and that a visual indication of the status of such values could have thereby been provided (col. 2, lines 9-13).

Gadson discloses a plurality of selection interfaces. Interfaces are provided for selection of a pattern (par. 0031), and selection of a dimension such as height and weight (par. 0042), and confirmation of the order (pars. 0035 and 0036).

Although the combination of Gadson/Bertram does not provide a ruler, such ruler as a visual aid would have been obvious to one of ordinary skill in the art as a functional equivalent of the slider taught by Bertram. For example, a user could "click" on a dimension labeled on the ruler in a manner similar to a user sliding a slider in order to customize a value.

Claims 3, 4, 13-28, 31, 32, and 41-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gadson (US 2002/0103566) in view of Bertram et al. (U.S. Patent No. 6,191,785 B1) as applied to claims 1, 2, 5-9, 29, 30, and 33-37 above, and further in view of [www.ic3d.com](http://www.ic3d.com).

Gadson is not specific to the specific article. Gadson merely discloses that the article is a garment (par. 0023). Further, Gadson does not disclose a features inventory. It is noted, however, that Gadson discloses a pattern data memory for storing pattern design and data information necessary for

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constructing patterns used for making a variety of garments as a matter of design choice (par. 0023).

www.ic3d.com, however, discloses customizable pants (page 8a and 8b). A user may select any number of fabric, color, style, front panel, cuff style, etc.. (see pages 2-8b) from a features inventory.

It would have been obvious to one of ordinary skill in the art to have provided the combination of Gadson/Bertram to have included options for selection of fabric, color, style, front panel, cuff style, etc...in order to have allowed for extension of the design choice of patterns already taught by Gadson. Such modification would have permitted a fuller customization of the Gadson garment and would have allowed a user to have mixed and matched the fit and style that was right for the user--thereby providing the best possible fit and satisfaction (see www.ic3d.com at page 1a).

Gadson does not provide a visual aid depicting a size dimension.

However, www.ic3d.com discloses a visual aid depicting a size dimension. Such size dimension comprises waist, rise, seat, length, and leg opening (see page 10 and sample visual aids on pages 11-13).

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It would have been obvious to one of ordinary skill in the art to have provided the combination of Gadson/Bertram to have included a visual aid depicting a size dimension--particularly dimensions comprising waist, rise, seat, length, and leg opening. Such modification would have allowed for a most accurate customization of the garment patterns already disclosed by Gadson.

Although the combination of Gadson/Bertram/www.ic3d does not provide a reorder recap as such, it is noted that Gadson does permit a user to confirm their order prior to finalization (pars. 0035 and 0036).

It would have been obvious to one of ordinary skill in the art to have provided the combination of Gadson/Bertram/www.ic3d to have included a reorder recap including a list of the customizations (i.e. fabric, color, article style, size dimensions) in order that the user may confirm the exact specifications of the order prior to finalizing such order. A user would be then able to finalize the order based on the recap or return to the various selection interfaces to re-enter or change specifications.

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**Allowable Subject Matter**

Claims 10-12, and 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

JP 09138822 A discloses a size selection catalog apparatus for clothes.

Kirby, Carrie: "Made to order for creative shoppers", San Francisco Chronicle, Nov. 27, 2000, pg F4 reports on [www.ic3d.com](http://www.ic3d.com). Kirby reports that measurements are stored at IC3D (page 3, last paragraph) and that IC3D can redo items (page 4, last paragraph).

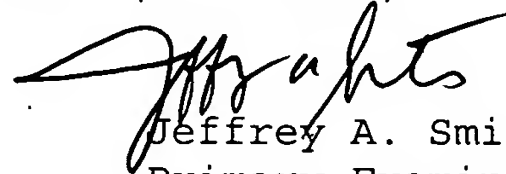
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be

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reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeffrey A. Smith  
Primary Examiner  
Art Unit 3625

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